

MINUTES

MONTANA SENATE 58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON AGRICULTURE, LIVESTOCK AND IRRIGATION

Call to Order: By **CHAIRMAN KEITH BALES**, on March 24, 2003 at 3 P.M., in Room 422 Capitol.

ROLL CALL

Members Present:

Sen. Keith Bales, Chairman (R)
Sen. Dale Mahlum, Vice Chairman (R)
Sen. Ken (Kim) Hansen (D)
Sen. Sam Kitzenberg (R)
Sen. Walter McNutt (R)
Sen. Linda Nelson (D)
Sen. Gerald Pease (D)
Sen. Corey Stapleton (R)
Sen. Joseph (Joe) Tropila (D)

Members Excused: Sen. Mike Taylor (R)

Members Absent: None.

Staff Present: Jennifer Stephens, Committee Secretary
Doug Sternberg, Legislative Branch

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 676, HB 677, HB 678, 3/11/2003
Executive Action:

SEN. BALES asked the committee if they had any objections to hearing HB 676, HB 677, and HB 678 together since they are similar and are carried by the same sponsor. The committee did not raise any objections.

HEARING ON HB 676, HB 677, HB 678

Sponsor: REP. MONICA LINDEEN, HD 7, HUNTLEY

Proponents: Don MacIntyre, Attorney, MT Department of Natural Resources
Sarah Carlson, MT Association of Conservation Districts
Clint McFarland, Yellowstone Conservation Districts
Jay Bodner, MT Stockgrowers Association
Nancy Schlepp, MT Farm Bureau
Bob Lane, Attorney,
Roy Gabel, Yellowstone Conservation Districts
Gay Easton, Yellowstone Conservation Districts

Opponents: None

Opening Statement by Sponsor:

REP. MONICA LINDEEN, HD 7, HUNTLEY, said all three bills relate to the Natural Stream bank and Land Preservation Act of 1975, also known as the 3-10 law. She explained that HB 676 would change the definition of the word "project". The new definition would make clear that activities on a stream, its bed, or native banks are covered by 3-10 law. Next, she explained that HB 677 verifies that justice court is the appropriate court to bring misdemeanor actions or to collect civil penalties. She said this clarification is important because there is some confusion about the justice courts ability to require restoration. The bill would allow 3-10 actions the authority to require restoration. She further explained that HB 678 would address the recent Montana Supreme Court case regarding conservation districts authority to determine their jurisdiction. She explained the Supreme Court has indicated that a declaratory ruling process is the appropriate mechanism that should be used to determine jurisdiction. The bill would define the declaratory process districts would use, as there is currently no declaratory ruling process in the statute that applies to conservation districts. The bill also addresses different levels of review. Conservation districts may make informal decisions regarding jurisdiction at any time; then if an applicant or interested party disagrees with the conservation district's decision, they would be able to

petition the conservation district for a declaratory ruling process.

Proponents' Testimony:

Don MacIntyre, Attorney, MT Department of Natural Resources, said that conservation districts are unique in terms of their approach to legislation; they simply don't bring bills to the legislature on an ad hoc basis. They actually form committees and come up with resolutions for purposes of the legislation. They take suggested changes to a annual convention in which the body as a whole votes on the matter. After that, the matter goes to a select committee of conservation district personnel that work on the development of the language before it comes as a request to the legislature. He spoke in favor of all three bills presented by **REP. LINDEEN**. Starting with HB 676, he said the reason why the bill is necessary is because the conservation districts have found themselves in a loop when it comes to prosecution or enforcement. Current statute says that in order to prove a violation, it has to be shown that there was impact to a stream. He said if that's the case, no one would ever come to file for a project because they can never be convicted of having breeched the law. He said adopting HB 676 would make the current statute more clear. He said he would support an amendment that would provide that a project does not include the activities of livestock. He supported HB 677 because it allows the court to determine what a project is instead of the district. He said the bill would set up the kind of process that would be used by a local government entity, such as the local conservation districts. Lastly, he said he supports HB 678 because it clarifies the jurisdiction of the courts. He distributed information to the committee, **EXHIBIT(ags62a01)**.

Sarah Carlson, MT Association of Conservation Districts, submitted written testimony, **EXHIBIT(ags62a02)**. She also submitted the testimony of **John Hollenback, Chairman, Deer Lodge Valley Conservation District**, **EXHIBIT(ags62a03)**, **Vicki McGuire, District Manager, Lincoln Conservation District**, **EXHIBIT(ags62a04)**, and **Tony Barone, Chairman, Richland County Conservation District**, **EXHIBIT(ags62a05)**.

Clint McFarland, Yellowstone Conservation Districts, said all three bills would enhance the ability of the conservation district supervisors to administer the 3-10 laws.

Jay Bodner, MT Stockgrowers Association, said that on HB 676, on page 1, line 21, at the definition of project, he would like to propose an amendment that would clarify that a project does not include livestock grazing. Other than that objection, he wanted

to go on record as supporting the bill. He added that 677 does a nice job of clarifying the violations of the 3-10 law. He had no problems with HB 678.

Nancy Schlepp, MT Farm Bureau, stood in support of the package of bills brought forward but added that she would like to see some amendments on HB 677. She explained that the Montana Farm Bureau has always appreciated the role that conservation districts play in our community, but she does have a problem with the language that adds administrative penalties to the jurisdiction of conservation districts, which she noted was on page 3, section 3. **Ms. Schlepp** explained that adding administrative penalties will start to switch conservation district's role of technical support to more of a policing agency. Furthermore, she said there are already civil penalties set up through the courts.

Bob Lane, Attorney, submitted written testimony,
EXHIBIT (ags62a06) .

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Roy Gabel, Yellowstone Conservation Districts, supported all three bills.

Gay Easton, Yellowstone Conservation Districts, supported all three bills. He added that passing the legislation would greatly benefit his district.

Informational Testimony:

Ray Beck, Administrator, Conservation Resource Development Division, Department of Natural Resources, said he was available to answer any questions.

Questions from Committee Members and Responses:

SEN. KEN HANSEN asked **Mr. Beck** if there are any districts in the state who are opposed to the proposed legislation. **Mr. Beck** said each district goes through a resolution process and as far as he understands, all districts voted in favor of the proposed legislation. **SEN. HANSEN** referred the same question to **Ms. Carlson**. **Ms. Carlson** said that the districts had ample opportunity to raise their objections; she could not recall any of the districts having concerns about the three bills.

SEN. LINDA NELSON asked **REP. LINDEEN** how she felt about the amendments proposed by some of the proponents. **REP. LINDEEN** said she had spoken with members of the MT Stockgrower's Association

and has no problem adding an amendment that would clarify livestock grazing near a creek. She said the conservation districts were not in favor of the other proposed amendment that would change the administrative penalties.

SEN. COREY STAPLETON asked **REP. LINDEEN** if the bill would have any retroactive power. Specifically, he wanted to know if the new legislation would affect any past court cases. **REP. LINDEEN** deferred the question to **Mr. Lane**. **Mr. Lane** explained that the retroactive applicability applies to notices of projects that are now pending before a conservation district.

SEN. STAPLETON asked **REP. LINDEEN** to explain why it would be a good change to allow conservation districts to administer penalties. He also asked if some of the penalties fines would go to the state's general fund. **REP. LINDEEN** said that it was her understanding that currently, the funds are distributed to the MT Department of Revenue for deposit in the state general fund. The funds are then transferred to the conservation districts. Under the change, the money would go straight to the conservation districts. Because of this, she said there would not be a great impact on the general fund. **SEN. STAPLETON** asked if this would give the conservation districts too much control. **REP. LINDEEN** explained that the people who volunteer their time to be a part of a conservation district probably would not want to take advantage of their neighbors: the very people that conservation districts serve. **SEN. STAPLETON** said that if there is so much trust within communities that have conservation districts, what is the need to pass the bills. **REP. LINDEEN** said it was stated in testimony that most people find it easier to work with their neighbors to resolve problems rather than take their grievances to court. **SEN. STAPLETON** asked if the mechanism is a better one, why not still have the money go through the general fund. **REP. LINDEEN** deferred the question to **Mr. Lane**. **Mr. Lane** said it was his understanding that there are approximately 1500 to 2000 3-10 permits granted a year. Out of that, there are probably 30 to 40 violations that occur. Out of that, there is less than \$1500 that is collected in fines. He explained that a lot of times, the little money they do collect is deposited into a county's treasury for the benefit of the conservation district. He added that 3-10 law is the only regulatory law that conservation district implement. They have no other regulatory authority. **SEN. STAPLETON** asked if that meant that conservation districts currently have no other way to raise revenue directly. **Mr. Lane** said no; conservation districts are funded through the statue and receive mill levies which they function under. **SEN. STAPLETON** asked if conservation districts might tend to fine individuals more if they knew the fine money would go straight to their budget instead of the state's general fund. **Mr. Lane** said he

didn't think so because the justices of the peace were making the recommendations that the money be deposited into a county's treasury.

SEN. LINDA NELSON asked **Ms. Carlson** her feeling on the amendment that would limit a conservation district's ability to give administrative penalties. **Ms. Carlson** said she understands the concerns posed by those supporting the amendment, but she still desires that HB 677 be left alone. She urged the committee to resist the amendment.

SEN. KEITH BALES asked **Ms. Carlson** if she would like to address the thought that conservation districts might take advantage of their ability to administer fines if they also have control of the money that comes in from the fines. **Ms. Carlson** said that she had considered the possibility, but given the long standing relationships between communities and conservation districts, she didn't think there would be a problem. She said if the concern jeopardized the passing of the bill, she would explore the possibility of an amendment some more, but she still would rather keep the bill the same. **SEN. BALES** asked what the budget was for current conservation districts. **Ms. Carlson** said generally, conservation districts receive \$100,000 that is strictly to be used for 3-10 work. If a district has a huge problem, they can apply to get more money. She added that conservation districts get about 60% of their funding from the shared coal account and about 40% from general fund money, giving them a budget of about \$1 million. **SEN. BALES** asked if a bonus of \$3,000 to the conservation district's budget is worth the trouble it takes to change the law. **Ms. Carlson** agreed that the amount of money from fines is not very large, but to the district, it could mean a great deal.

SEN. BALES asked **Ms. Schlepp** what her concern was in terms of conservation districts having administrative power. **Ms. Schlepp** explained that she doesn't understand why conservation districts would want administrative power. She said it seemed to her that conservation districts would not want that type of responsibility. She said that she had talked to many people who live within conservation districts and they were not aware of the part of the bill that would grant conservation districts administrative power. She also made the point that if not many penalties are assessed, then the court system should work just fine.

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SEN. BALES asked **Mr. MacIntyre** what is meant by a natural perennial flowing stream. **Mr. MacIntyre** said that a natural

perennial flowing stream is defined as one that flows at all times of the year without man made activities taking place. He further explained that by law, if a person is on a natural perennial flowing stream and there is a dam installed that was build before 1975, it is still legal to keep the dam. He said the new bills would not change this ruling.

SEN. BALES asked **REP. LINDEEN** if passing HB 676, HB 677, and HB 678 would affect any bills that were passed previously in the session. **REP. LINDEEN** deferred the question to **Mr. MacIntyre**. **Mr. MacIntyre** said no; the three bills do not have to be coordinated with earlier legislation.

Closing by Sponsor:

REP. MONICA LINDEEN, HD 7, HUNTLEY, ended by saying that conservation districts have a very good reputation for doing fine work in their local communities. She closed on HB 676, HB 677, and HB 678.

ADJOURNMENT

Adjournment: 4:30 P.M.

SEN. KEITH BALES, Chairman

JENNIFER STEPHENS, Secretary

KB/JS

EXHIBIT (ags62aad)